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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,394	09/25/2003	Richard C. Darr	03-206	4263

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EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,394

Applicant(s)

DARR, RICHARD C.

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/25/03 and 10/07/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 11-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a method for trimming a plastic container having an open end, classified in class 83, subclass 13.
 - II. Claims 11-19, drawn to an apparatus for trimming a plastic container having an open end, classified in class 83, subclass 54.
 - III. Claims 20-27, drawn to a product comprising an intermediate container, classified in class 215, subclass 382.

The inventions are distinct, each from the other because:

- A. Inventions I and III are related as process of making a final product from an intermediate product and the intermediate product. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case (1) applies because the process as claimed can be used to make other materially different product such as a container comprising a pipe having no ends; the pipe can be trimmed at one or both ends and a base separately attached thereafter to either end to complete the container.
- B. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case (1) applies because the process can be practiced by another materially different apparatus that

includes a stationary knife and the container rotated around the stationary knife instead of the apparatus that includes a knife rotating around the container.

C. Inventions II and III are related as apparatus for making a final product from an intermediate product and the intermediate product. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In the instant case (1) applies because the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product such as a container comprising a pipe having no ends; the pipe can be trimmed by the apparatus at one or both ends and a base separately attached thereafter to either end to complete the container by the apparatus.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR. 1.143).

4. During a telephone conversation with Mr. Robert H. Bachman (Reg. No. 19,3743) on 10/07/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-27 are withdrawn from further consideration

by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wakabayashi (3,818,785) in view of Criss et al. (3,682,026), hereinafter Criss. Regarding claim 1, Wakabayashi teaches a method for trimming a plastic container 26 having an open end including the steps of providing a multi-station assembly 1 for holding a container during trimming, wherein the assembly includes a plurality of spaced stations 12 and wherein the container traverses stations of the multi-stations assembly 1 for operating stages. Wakabayashi also teaches that the steps of moving the container to be trimmed onto the multi-station assembly 1 at a first operating stage, moving a knife 55 into the engagement with container 26 at the second operating stage, trimming the container by the knife 55 at a third operating stage, ejecting the trimmed portion 35 at a fourth operation stage, and ejecting

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the trimmed container at a fifth operating stage. The trimmed portion 35 of the container is ejected by the air nozzle 75 into a chute 78. The trimmed bottle also is ejected from the multi-stations assembly 1 by the discharge device 25. Wakabayashi's container 26 does not have a open end; however, Wakabayashi teaches a method of trimming for bottles, which inherently includes bottles having an open end. See col. 1, lines 12-35 in Wakabayashi. See Figs. 1-8 and col. 3, lines 27-67 and col. 4, lines 1-68 and col. 6, lines 24-64 in Wakabayashi. Wakabayashi does not teach that the container is stationary during trimming. Wakabayashi teaches that the container 26 rotates during cutting operation by a rotating member 50 and the blade 55 is stationary during the trimming operations. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a rotating mechanism for the blade and hold the container stationary, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. In addition, the use of rotating knife rotating around a container while the container is held stationary is well known in the art such as taught by Criss or Lee (1,806,457. Criss teaches a cutting mechanism for trimming a plastic container 30 including a mechanism to hold the container 30 stationary and a mechanism to rotate a blade or cutter 140 around the container's top 30c while the container is held to plate 40 by locking plate 60. The container 30 is stationary relative to the cutter 140 during the trimming of the container 30. See Figs. 1-4 and col. 2, lines 14-68 and col. 3, lines 11-67 and col. 4, lines 1-66 in Criss. It would have been obvious to a person of ordinary skill in the art to provide Wakabayashi's trimmer with the rotating mechanism for the knife and holding mechanism for the container as taught by Criss in order

to rotate the knife and hold the container stationary during the cutting operation, since both methods of holding the container and rotating the knife and rotating the container and holding the knife produce a same end result, which is the separation of the top portion of the container from the main body of the container.

Regarding claim 2, Wakabayashi teaches everything noted above including that the container to be trimmed is a blow molded container.

Regarding claim 3, Wakabayashi as modified by Criss teaches everything noted above including that the step of holding the container 30 to be trimmed stationary beneath the area to be trimmed. See Fig. 1 in Criss.

Regarding claims 4 and 5, Wakabayashi teaches everything noted above including that the trimming operation in the second stage occupies a plurality of stations 12 and separate stages are performed in the area of separate stations. See Figs. 1-8 in Wakabayashi.

Regarding claim 6, Wakabayashi teaches everything noted above including that the upper portion of the trimmed container has a finish portion and wherein the outer diameter of the trimmed portion is no greater than the diameter of the finish portion. See Fig. 6, 9, and 10 in Wakabayashi.

Regarding claims 7 and 8, Wakabayashi as modified above teaches everything noted above except that the method is a high speed operation for trimming at least 5,000 containers per hour or at least 10,000 containers per hour. However, Official notice is taken that adjusting the speed of the trimming operation of the containers to the certain desired speed is within the skill of a person of ordinary skill in the art such as is evident in Karll (6,614,018). Karll teaches that the speed of the loading and trimming containers are

adjustable. See col. 25, lines 40-59.

Regarding claims 9, Wakabayashi as modified by Criss teaches everything noted above including that the container is held on a pedestal 12 and the holder is beneath the area to be trimmed.

Regarding claims 10, Wakabayashi as modified by Criss teaches everything noted above including that the knife 140 is cammed into engagement with the container to be trimmed. See Fig. 2 and col. 2, lines 15-55 in Criss.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lee (1,806,475), Yoshikawa (3,653,285), Karll (4,614,018), Marshall et al. (6,619,946), Beltrandi (6,401,587), Le Noaur (5,201,788), Baker (2,940,229), Cady et al. (3,924,315), and Palazzolo (5,617,768) teach a method for trimming a plastic container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981.

The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082.

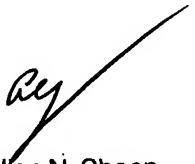
The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

October 8, 2004



Allan N. Shoap
Supervisory Patent Examiner
Group 3700